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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF  
MARK F. JAMES REGARDING  
SCO'S OBJECTIONS TO THE  
MAGISTRATE COURT'S ORDER  
DENYING SCO'S MOTION FOR  
RELIEF FOR IBM'S SPOILIATION OF  
EVIDENCE**

**FILED IN REDACTED FORM  
[ORIGINALLY FILED UNDER SEAL]**

Case No. 2:03CV0294DAK  
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAR 16 2007

BY D. MARK JONES, CLERK  
DEPUTY CLERK

**SEALED**

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Case No. 2:03CV0294DAK  
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

I, Mark F. James, declare as follows:

1. I am a citizen of the United States, am over the age of 21, and am competent to testify to the matters set forth herein.

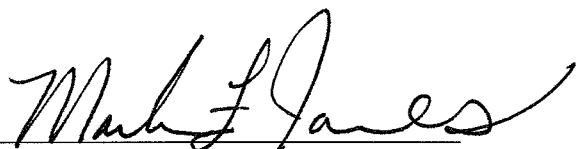
2. I am an attorney at law duly licensed to practice before all the Courts of the State of Utah, and an attorney with the firm of HATCH, JAMES & DODGE PC, counsel for the Plaintiff/Counterclaim-Defendant, The SCO Group, Inc., in the pending motion.

3. Attached as hereto and filed herewith are true and correct copies of the following documents:

| <u>EXHIBIT</u> | <u>DOCUMENT DESCRIPTION</u>  |
|----------------|--|
| 1              | January 18, 2007 Hearing Transcript  |
| 2              | March 2, 2007 Order  |
| 3              | Email from Randy Swanberg dated April 8, 2003, bearing Bates number 181019724, and marked as Deposition Exhibit 682  |
| 4              | November 18, 2005 Deposition Transcript Excerpts of Daniel D. Frye   |
| 5              | March 10, 2006 Deposition Transcript Excerpts of Mark Brown  |
| 6              | December 2, 2005 Deposition Transcript Excerpts of Paul E. McKenney  |
| 7              | Email from gone@linux.ibm.com dated November 13, 2001, bearing Bates number 181524791-93, and marked as Deposition Exhibit 435   |
| 8              | Consulting Times, <u>Inside IBM – Dan Frye and the Linux Technology Center</u> , located at <a href="http://www.consultingtimes.com/articles/ibm/frye/fryeinterview.html">www.consultingtimes.com/articles/ibm/frye/fryeinterview.html</a> |

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16<sup>th</sup> day of March, 2007.

  
Mark F. James